IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4031 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAH HASMUKHLAL SHANTILAL

Versus

PAREKH BHAGWANDAS MAGANLAL

Appearance:

MR HM PARIKH for Petitioner

MR JM PANCHAL for Respondent No. 1

MR H L JANI, APPfor Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/11/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. L.B. Dabhi for Mr. H.M. Parikh on behalf of the petitioner.

Rule. Learned Advocate Mr. J.M. Panchal waives service on behalf of the respondent no.1 while ld. A.P.P. Mr. H.L. Jani waives service on behalf of the respondent no.2.

The petitioner has prayed to quash and set aside the criminal proceedings filed by the respondent no.1 against the petitioner in the Court of learned J.M.F.C, Petlad vide Inquiry Case no.168/2000 and the order passed by the learned Magistrate for the investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as " the Code").

The petitioner has produced the copy of the impugned complaint at running page 9. Accordingly, the present respondent no.1 has filed the complaint against the present petitioner on the allegation that the present petitioner had induced the respondent no.1 in investing the amount in his Company so that the respondent no.1 could fetch better amount of interest. That accordingly, about Rs.75,000/- were deposited by three different receipts as per details stated in paragraph 3 of the complaint. That the said investement was made in three different names, i.e in the name of the respondent no.1, his son and daughter in law respectively for a period of one year. That on 12-5-2000 and 13-5-2000 on the date of maturity of the said receipt the respondent no.1 claimed the invested amount. However, the petitioner refused to pay not only that but threatened of dire consequences if the demand for the said amount persisted. On the said fact, the respondent no.1 filed the impugned complaint which after recording the verification, learned Judicial Magistrate, First Class, Petlad, referred to Petlad Town Police Station for investigation under Section 156(3) of the Code.

Learned Advocate Mr. Dabhi has urgned that complaint impugned is in respect to a dispute of civil nature, and thereby, is not maintainable. That the respondent no.1 was regularly paid interest and thereby also the complaint is not maintainable. That the Magistrate has misconstrued the facts and has ordered investigation in the said matter. It would be pertinent to note that perusal of the copy of complaint produced at page 9 clearly suggests that all ingredients of Section 406 are averred and sufficient details are given in the complaint which make out the offence as alleged. Under the circumstances, it is difficult to uphold the submission urged on behalf of the petitioner to exercise discretion under Section 482 of the Criminal Procedure

Code.

On the basis of the aforesaid discussion, the petition fails and stands disposed of as rejected. Rule is discharged. Interim relief granted earlier is hereby vacated. No order as to costs.

(A.K.Trivedi,J.)

stanley-akt.